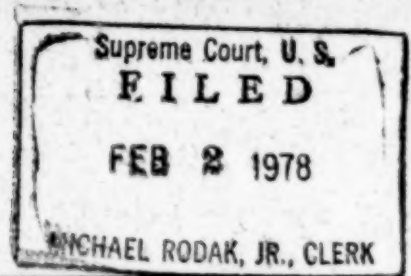


No. 77-912



In the Supreme Court of the United States

OCTOBER TERM, 1977

**ALASKA ROUGHNECKS AND DRILLERS ASSOCIATION,
PETITIONER**

v.

NATIONAL LABOR RELATIONS BOARD

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

**MEMORANDUM FOR THE NATIONAL
LABOR RELATIONS BOARD**

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
*Washington, D.C. 20530.***

**JOHN S. IRVING,
General Counsel,
National Labor Relations Board,
*Washington, D.C. 20570.***

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1. The Board found that Mobil Oil Corp. (herein "Mobil") violated Section 8(a)(5) and (1) of the National Labor Relations Act, 61 Stat. 140, 141, 29 U.S.C. 158(a)(5) and (1), by failing to bargain with petitioner (herein "the Union") about its decision to terminate a subcontract with Santa Fe Drilling Company (herein "Santa Fe"), and the effects of such termination on the employees performing work under the subcontract. The facts are as follows.

Mobil owned a major interest in, and was the operator of, an offshore oil drilling platform near Anchorage, Alaska. In 1972, Mobil entered into a contract with Santa Fe under which the latter conducted drilling and

production operations for Mobil. During the period relevant to the Board proceedings, there were on the platform approximately 13 production employees, including two leadmen, who were furnished by Santa Fe. In addition, there were two production foremen, furnished by Mobil, who closely supervised the platform's operations, including the activities of the 13 employees. (Pet. App. 12a-14a.)

In the fall of 1973, the Union petitioned the Board for a representation election among all employees on the platform, excluding, *inter alia*, leadmen and other supervisors. The Union stipulated, and the Board's Regional Director found, that Santa Fe was the employer of the employees on the platform. There was no claim that Mobil was a joint employer, and Mobil did not participate in the proceeding. The Union won the election, and, in January 1974, was certified as the representative of the Santa Fe employees on the platform. (Pet. App. 12a-13a.) Thereafter, the Union and Santa Fe entered into bargaining negotiations. Faced with the prospect of increased labor costs, Santa Fe asked Mobil for an increase in payments under their cost-plus contract. Mobil refused and advertised for bids for a replacement for Santa Fe. Upon locating another contractor, Mobil notified Santa Fe, on June 14, 1974, that the contract would be terminated as of July 17. On June 21, Santa Fe notified the Union of the termination of its contract with Mobil. (Pet. App. 15a-17a.) The Union thereupon wrote Mobil requesting negotiations with it as a "successor employer." Mobil refused to bargain with the Union, which then filed a charge with the Board. The Board's General Counsel issued a complaint alleging that Mobil was a "joint employer" with Santa Fe, and that it had violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union. (Pet. App. 17a-18a, 39a.)

The Board, finding that Mobil's supervisors exercised daily control over the employees supplied by Santa Fe, concluded that Mobil and Santa Fe were joint employers of those employees.¹ Mobil thus was required to bargain with the Union about the decision to terminate the Santa Fe subcontract and the effects of that decision upon the employees. By failing to do so, Mobil violated Section 8(a)(5) and (1) of the Act. (Pet. App. 1a-3a, 18a-24a.) The Board ordered Mobil to bargain with the Union and to compensate the displaced employees for their losses in pay (Pet. App. 6a).

2. The court of appeals denied enforcement of the Board's order. The court reasoned that, since the Board's representation procedures specify that notice "shall" be given to the "employer" and since Mobil was not identified as the employer or a joint employer in the representation proceeding, Mobil was entitled to assume that Santa Fe was the employer of the platform employees in the absence of any demand made on Mobil by the Union. Therefore, Mobil did not violate Section 8(a)(5) of the Act by unilaterally terminating its Santa Fe contract because the termination occurred before the Union's June 26, 1974 bargaining demand on Mobil. (Pet. App. 41a-43a.)

¹A joint employer is one who shares control over employees and their terms and conditions of employment with another employer. See *National Labor Relations Board v. Greyhound Corp.*, 368 F. 2d 778, 780-781 (C.A. 5). His bargaining obligation is coterminous with that of the other joint employer. See *Ref-Chem Co.*, 169 NLRB 376, 379-380, enforcement denied on other grounds, 418 F. 2d 127 (C.A. 5). On the other hand, a successor employer has no bargaining obligation respecting the predecessor employer's employees unless he takes over those employees and continues substantially the same operations as the predecessor employer. See *National Labor Relations Board v. Burns International Security Services*, 406 U.S. 272, 279-281.

3. The question presented is whether the court below properly concluded that, because Mobil was not named as an employer of the Santa Fe employees in the Board representation proceeding, it could not be on notice that it was legally required to bargain with the Union as the representative of those employees until the Union made a formal demand upon it (which occurred after Mobil took the unilateral action complained of). The Board believes that the court's conclusion is erroneous, for if, as the Board found, Santa Fe and Mobil were joint employers, Mobil was bound by Santa Fe's knowledge of a bargaining obligation to the Union, which arose when the Board certification issued (see note 1, *supra*).² However, the Board did not petition for a writ of certiorari because, in its judgment, the question is tied to the rather unusual facts of this case. Should this Court grant the Union's petition for certiorari, the Board will defend its decision and order.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.

FEBRUARY 1978.

²Mobil was not prejudiced by its failure to participate in the representation proceeding, for in the unfair labor practice proceeding it was afforded an opportunity to, and did, litigate the question whether it was in fact a joint employer (Pet. App. 18a-20a).